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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MIGUEL A., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL A.,

Defendant and Appellant.

D055465

(Super. Ct. No. J222-395)

APPEAL from a judgment of the Superior Court of San Diego County,

Dwayne K. Moring, Judge. Affirmed in part and reversed in part with directions.

Miguel A. (minor) appeals from an adjudication by the juvenile court that the minor committed battery against a school employee (Pen. Code,¹ § 243.6) as a misdemeanor under section 17, subdivision (b)(5), and that he committed misdemeanor battery (§ 242). The minor contends the true finding for battery must be dismissed as it is a lesser included offense of section 243.6. The Attorney General correctly concedes that

¹ All further statutory references are to the Penal Code unless otherwise specified.

true finding for misdemeanor battery under section 242 must be dismissed. The minor also contends the trial court erred in imposing a search waiver requirement as a condition of probation.

We agree with the parties that the true finding for the violation of section 242 must be dismissed. We also conclude that the minor has forfeited his challenge to the probation condition by failing to raise it in the juvenile court. Accordingly, we will affirm the true finding and disposition as to the violation of section 243.6 and reverse the true finding as to section 242 with directions that the juvenile court dismiss that count.

Since the minor does not challenge either the admissibility or the sufficiency of the evidence to support the true finding for violation of section 243.6, we will not set forth the usual statement of facts. It is sufficient for the purposes of this appeal to note that the minor was found to have knocked down a school vice principal who was attempting to require the minor to attend a scheduled counseling session.

DISCUSSION

At the time of the disposition hearing the minor's counsel indicated she had reviewed the probation report. That report contained the search waiver, which is now the subject of this appeal. Counsel not only did not object, but voiced agreement with the terms of the minor's probation. The minor now argues, for the first time on appeal, that the trial court should not have imposed a search waiver as a condition of probation since there is no nexus apparent between the crime and the requirement that he give up the privacy rights, which are waived by a search condition. We first find the objection waived by failure to raise it in the juvenile court. However, even if we were to consider

the merits of imposing such condition, we would not find an abuse of discretion on this record.

The minor relies on *People v. Lent* (1975) 15 Cal.3d 481, 486, for the proposition that a search waiver cannot be required unless it is related to the crime committed, the manner in which it was committed or is necessary for the prevention of future criminality of the probationer. The Supreme Court has also held, however, that objection to proposed conditions of probation must be raised in the trial court or they will be deemed waived on appeal. (*People v. Welch* (1993) 5 Cal.4th 228, 234.) There are, of course, sound reasons for the forfeiture rule in the context of probation conditions. If the objection is timely raised, the trial court may correct the error, or it may state the reasons for the court's decision, which would permit meaningful review on appeal.

The present case illustrates the wisdom of the waiver rule. There were no objections, thus the issue was never addressed in the trial court. Examining the other conditions of probation, there are unchallenged gang conditions imposed on the minor. For example, the minor is prohibited from possessing certain gang materials. Thus, there is apparently some gang connection with the minor's delinquent behavior. He has also been prohibited from associating with known members of the Logan gang. It would appear, from the unchallenged conditions, that the court was concerned with social factors that might cause the minor to continue with unlawful behavior. Such conditions could indicate that the court felt a search waiver was an important part of this minor's rehabilitation. However, since the minor did not oppose any of the probation conditions,

we are left with a record devoid of information, which might inform our review of the trial court's decision.

We also note that juvenile courts have broader discretion than adult criminal courts do in fashioning conditions of probation that will promote the rehabilitation of the minor. (*In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033; *In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 968-969.)

In light of the record presented to us we find that the minor has waived the right to challenge the search condition, and, in any event, he has failed to show an abuse of the court's discretion.

DISPOSITION

The true finding for the offense of battery under section 242 is reversed and remanded to the juvenile court with directions to dismiss that count. In all other respects the judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

McDONALD, J.

AARON, J.